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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 JOSE RAFAEL CASTRO-LINO,

11 Petitioner,

12 v.

13 RON HAYNES,

14 Respondent.

CASE NO. 3:19-cv-05405-BHS-JRC

ORDER TO EXPAND THE
RECORD AND PROVIDE A
SUPPLEMENTAL ANSWER

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16 The District Court has referred this petition for a writ of habeas corpus, filed pursuant to
17 28 U.S.C. § 2254, to United States Magistrate Judge J. Richard Creatura. The District Court's
18 authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and local Magistrate Judge Rules
19 MJR3 and MJR4.

20 Petitioner was convicted in state court of one count of second degree rape and seeks relief
21 from that conviction. *See* Dkt. 3. His petition lists five grounds for review, including what
22 appears to be a fifth ground for "[ineffective assistance of counsel], failed to object when the
23 prosecuting attorney committed prosecutorial misconduct by misstating the law and reducing the
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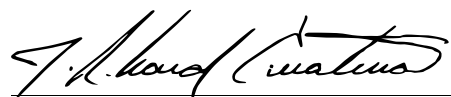
1 State's burden of proof." *See* Dkt. 3, at 21. However, respondent's answer overlooks the fifth
2 ground. *See* Dkt. 14, at 4 (citing Dkt. 3, at 5–10). Moreover, although respondent addresses the
3 merits of petitioner's assertions that his attorney rendered ineffective assistance of counsel by
4 failing to object to multiple instances of alleged prosecutorial misconduct and failing to call a
5 witness, the trial transcripts are not included in the state court record filed by respondent. *See*
6 Dkt. 15.

7 Rule 5(c) of the Rules Governing Section 2254 and 2255 Proceedings authorizes this
8 Court to "order that the respondent furnish other parts of existing transcripts or that parts of
9 untranscribed recordings be transcribed and furnished." Moreover, "[i]f a transcript cannot be
10 obtained, the respondent may submit a narrative summary of the evidence." 28 U.S.C. § 2254,
11 Rule 5.

12 Accordingly, the Court orders respondent to expand the state court record by providing
13 the transcript of petitioner's trial. If the trial transcript cannot be obtained, then respondent may
14 submit a narrative summary of the evidence. Respondent must also file a supplemental answer
15 with up to six pages of additional briefing that addresses petitioner's fifth ground for relief.

16 Respondent shall file the additional state court record on or before October 25, 2019.
17 Respondent shall file the supplemental answer on or before November 1, 2019. Petitioner may
18 file and serve a reply to the supplemental answer no later than November 8, 2019. The Clerk's
19 Office will re-note the petition in this matter for consideration on November 8, 2019.

20 Dated this 8th day of October, 2019.

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23 J. Richard Creatura
24 United States Magistrate Judge